

Plaintiff, by and through counsel, and pursuant to Fed. R. Evid. 615, moves this Court for an order sealing the deposition transcript of Defendant Fallon, which the parties already agree to

do, and further sequestering remaining witnesses in the discovery of this case. Defendant Fallon has no objection to this Motion.

On November 17, 2011, Defendant Lisa Fallon was deposed in Indiana. Immediately following her deposition, it was agreed between the parties that her deposition transcript would be sealed. In particular, the parties agreed not to disclose Ms. Fallon's testimony to John H. Schneider, his agents, lawyers or assigns. In federal lawsuit 11-CV-366F, John H. Schneider, along with his wife and his professional corporation, are alleged to have orchestrated a scheme to defame and defraud the Plaintiff by using Ms. Fallon. The allegations include conspiracy to commit and the commission of wire fraud and mail fraud with the intent to economically ruin the Plaintiff and his medical practice. The purpose of the parties' previous agreement and of this Motion are to ensure that the alleged co-conspirators give independent testimony without first knowing what other witnesses testified to under oath.

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

- (a) a party who is a natural person;
- (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;
- (c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or
- (d) a person authorized by statute to be present.

Fed. R. Evid. 615. "Rule 615 codified a well-established common law tradition of sequestering witnesses 'as a means of discouraging and exposing fabrication, inaccuracy, and collusion.'" *United States v. Jackson*, 60 F.3d 128, 133 (2nd Cir. 1995) (*quoting* Fed. R. Evid. 615 Advisory Committee Notes). "Sequestering witnesses to assist in ascertaining truth is at least as old as the Bible." *Frideres v. Schiltz*, 150 F.R.D. 153, 158 (S.D. Iowa 1993). The Supreme Court

observed that this practice serves two purposes: it “exercises a restraint on witnesses ‘tailoring’ their testimony to that of earlier witnesses; and it aids in detecting testimony that is less than candid.” *Geders v. United States*, 425 U.S. 80, 87 (1976).

WHEREFORE, Plaintiff moves this Court for an order sealing the deposition transcript of Defendant Fallon and prohibiting its disclosure from any person not identified as an agent of a party to this case; and further order that all witnesses, except agents of a party, that are deposed in the discovery of this case shall be sequestered pursuant to Fed. R. Evid. 615, and shall not be allowed to review or otherwise learn of other witnesses’ testimony.

DATED this 15th day of February, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2012, the undersigned filed the foregoing MOTION TO SEAL AND SEQUESTER WITNESSES PURSUANT TO FED. R. EVID. 615 with the Clerk of Court using the CM/ECF system which sent notification of such filing upon all attorneys of record including:

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